STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

GROSSMONT UNION HIGH SCHOOL DISTRICT, Employer, and GROSSMONT STUDENT SERVICES ASSOCIATION, Employee Organization, and GROSSMONT EDUCATIONAL ASSOCIATION, CTA/NEA, Employee Organization, and GREATER GROSSMONT FEDERATION OF TEACHERS, LOCAL 1930, CFT/AFT, AFL-CIO, Employee Organization.	Case Nos. LA-R-185 LA-R-254 EERB Decision No. 11 EERB Order No. JR-2

ORDER JOINING REQUEST FOR JUDICIAL REVIEW

The request of Grossmont Student Services Association (GSSA) that the Educational Employment Relations Board (EERB) join GSSA's request for judicial review of the EERB decision in Grossmont Union High School District[1] is granted. This is a case of "special importance" within the meaning of Government Code Section 3542(a)(1).[2] The issue decided by the EERB in the Grossmont decision is novel and one that arises frequently in representation unit cases arising under the Educational

[1]EERB Decision No. 11, March 9, 1977.

[2]Gov. Code Sec. 3542(a) provides:

> No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint.

Employment Relations Act. In addition, GSSA, having lost the representation election directed by the EERB in the Grossmont decision, is not an exclusive representative. Government Code Section 3543.3 requires that a district meet and negotiate "with and only with . . . exclusive representatives. . .." Since Government Code Section 3543.5(c)[4] makes it an unfair practice to refuse to negotiate "with an exclusive representative", GSSA may not obtain judicial review of the EERB's unit determination in the Grossmont case by charging the District with the unfair practice of refusal-to-negotiate, as provided by Government Code Section 3542(a)(2).[5]

GSSA's original petition that the EERB join its request for judicial review was filed on March 17, 1977, eight days after the EERB's Grossmont decision; therefore, GSSA's request was not untimely as maintained by the District during oral argument on the question of judicial review.[6]

IT IS THEREFORE ORDERED as follows:

(1) Grossmont Union High School District, EERB Decision No. 11, dated March 9, 1977, is certified as a case of "special importance" within the meaning of Government Code Section 3542(a)(l).

(2) The request of Grossmont Student Services Association that the Educational Employment Relations Board join Grossmont Student Services Association's

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[3]Gov. Code Sec. 3543.3 provides:

> A public school employer or such representatives as it may designate who may, but need not be, subject to either certification requirements or requirements for classified employees set forth in the Education Code, shall meet and negotiate with and only with representatives of employee organizations selected as exclusive representatives of appropriate units upon request with regard to matters within the scope of representation.

[4]Gov. Code Sec. 3543.5(c) provides:

> It shall be unlawful for a public school employer to:
>
> Refuse or fail to meet and negotiate in good faith with an exclusive representative.

[5]See A.F. of L. v. NLRB, 308 U.S. 401, 5 LRRM 670, 675 (1940).

[6]GSSA's original request of March 17, 1977 was withdrawn by letter dated March 28, 1977 and replaced with a "request for reconsideration" of the Grossmont decision, a step apparently taken to assure that administrative remedies would be properly exhausted before seeking judicial review. GSSA's March 17 request that the EERB "delay the enforcement" of its Grossmont order was withdrawn by GSSA on March 28 and never reinstituted. GSSA's request for reconsideration was filed with the EERB on April 4, 1977 and was denied on April 29, 1977. Following that denial, GSSA filed its "petition to join in judicial review" on May 6, 1977. On its own motion, the EERB held oral argument on the matter on June 30, 1977.

request for judicial review of Grossmont Union High School District, EERB Decision No. 11, dated March 9, 1977, is granted.

(3) This order shall expire sixty days from its date.

Reginald Alleyne, Chairman Raymond J. Gonzales, Member

Dated: July 25, 1977

Jerilou H. Cossack, Member, dissenting:

I completely disagree with the majority that this is a case of "special importance" within the meaning of Educational Employment Relations Act (EERA) Section 3542(a)(l).[1] Further, I think this decision is untimely and will severely disrupt the negotiating relationship of the District and the exclusive representative.

Section 3542(a)(1) neither defines "special importance" nor enumerates criteria for evaluating whether a case is within its meaning. The majority determined that the instant case was one of special importance because it is "novel and one that arises frequently."

We have decided 15 unit determination cases. Like the original decision in this case,[2] many of our decisions have not been unanimous. Like this case, many of those decisions were cases of first impression. Some of the questions contained in these cases have occurred repeatedly. Many more cases yet to be decided by this Board will be of the same nature. The majority opinion seems to render all of these

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[1] Gov. Code Sec. 3542 reads, in pertinent part,

> (a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review;....

All further statutory references are to the Government Code.

[2] Grossmont Union High School District, EERB Decision No. 11, March 9, 1977.

cases ones of "special importance"—i.e. ones that are "novel and... [arise] frequently." A primary purpose of administrative agencies is to provide a method for adjudicating and resolving disputes without resort to the already crowded courts. This Board is expected to make difficult and precedential decisions to facilitate an orderly and efficient system of public school employer-employee relations. If every major unit decision is certified for judicial review, we will become merely an additional level of bureaucracy which must be gotten through prior to inevitable resort to the courts. I believe that a decision to certify a case for judicial review must rest on something more substantial than that the issue or issues raised are "novel" or "arise frequently," perhaps in situations where the decision is arguably in conflict with a statute other than the EERA.

Aside from the fact that the majority interpretation of "special importance" as cases that are "novel and [arise] frequently" appears to me to be inherently internally inconsistent, it also undermines the legislature's articulated purpose for enacting the EERA as it is stated in Section 3540, namely "...to promote the improvement of personnel management and employer-employee relations within the school system." The timeliness of the majority's decision to certify this case to the courts as one of special importance frustrates that intent. The unit decision in Grossmont was issued on March 9, 1977. On May 6, 1977, Grossmont Student Services Association (GSSA) petitioned us to join their request for judicial review.[3] Despite this request, a representation election was held on May 9, 1977, and the Grossmont Education Association (GEA) was certified as the exclusive representative on May 23, 1977. Since that time, the district and GEA have negotiated as they were obligated to do and have reached agreement on items affecting employees whose inclusion in the unit will now be subject to judicial review. The district and GEA properly relied on the certification as the evidence of our final decision and attempted to meet their respective obligations under the EERA. The majority's decision today creates unwarranted uncertainty in this district, since it raises serious questions regarding the obligation of the exclusive representative to represent employees in the disputed classifications and the district's obligation to administer and abide by the negotiated agreement. Not only is confusion created in this particular district, but also in other districts with a similar unit issue. Unfortunately, some parties may use this confusion to delay

[3]A request for judicial review and a delay in enforcement of Grossmont was filed on March 17, 1977, but withdrawn shortly thereafter. GSSA claims it withdrew the request in order to seek reconsideration and thereby exhaust all administrative remedies available.

or frustrate negotiations. At a bare minimum, the decision to join in judicial review should have been made prior to the issuance of a certification of an exclusive negotiating agent.

The majority claims that joinder in the request for judicial review is warranted in this case, because, unlike Sweetwater,[4] the requesting party, GSSA, may not challenge our unit determination through a refusal to negotiate charge since it is not the exclusive representative and the district is under no obligation to negotiate with a non-exclusive representative. The majority implies that an exclusive representative could obtain judicial review of an EERB unit determination by following the steps outlined in the Sweetwater dissent:

> -The employer refuses to negotiate on those matters;
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> -The exclusive representative files an unfair practice charge alleging that the district refused to negotiate in violation of Section 3543.5(a);
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> -The General Counsel issues a notice of hearing;
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> -An EERB hearing officer holds the hearing and dismisses the case;
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> -The exclusive representative appeals the dismissal to the Board itself, which affirms the hearing officer's decision;
>
> -The exclusive representative appeals EERB's decision to the courts.

I disagree with the above scenario. An employer is not obligated to negotiate about matters within the scope of representation for employees excluded from the appropriate unit. Therefore, the exclusive representative's charge would be dismissed without a hearing because the employer was not under any obligation to negotiate about employees outside the unit. If an unfair practice charge is dismissed for failure to state a prima facie charge, and that dismissal is sustained by a quorum of the Board, the EERB properly has refused to issue an unfair practice complaint.[5] Section 3542(b) provides, in pertinent part,

> (b) Any charging party, respondent, or intervenor aggrieved by a decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, shall have the right to seek review in a court of competent jurisdiction. (Emphasis added.)

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[4]Sweetwater Union High School District, EERB Decision No. 4, November 23, 1976; request to join in judicial review denied, EERB Order No. JR-1, April 29, 1977.

[5]The EERA differentiates between unfair practice charges, which are filed by the parties, and unfair practice complaints, which are issued by the EERB. See Gov. Code Secs. 3541.3(i), 3541.3(j), 3541.5 and 3541.5(a). The authority to refuse to issue an unfair practice complaint is vested solely in a quorum of the EERB in Sec. 3541.3(k).

For the reasons set forth above, I do not join in GSSA's request for judicial review. Instead of promoting the improvement of employer-employee regulations, the majority is fostering confusion among the parties and encouraging lengthy delays and disruptions of negotiations.

Jerilou H. Cossack, Member